

Water Administration and Enforcement in Wyoming

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History

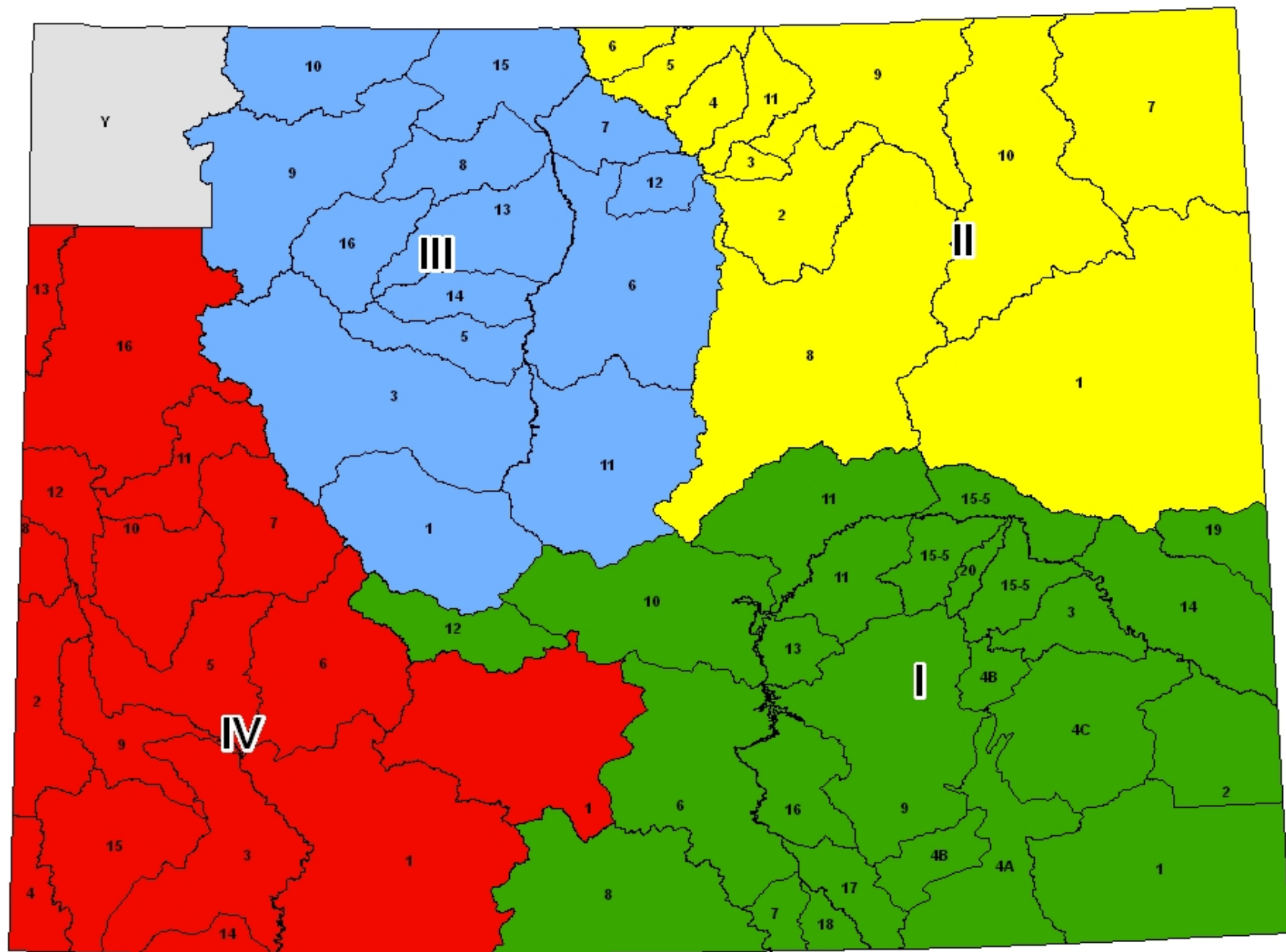
- 1862 – Earliest water right of record
- 1886 – Territorial Legislature creates 8 water districts with provision for Governor to create additional districts
- 1886 – Legislature creates water commissioner positions to oversee supervision of public water
- 1888 – Elwood Mead appointed Territorial Engineer

History

- 1890 – Wyoming becomes 44th State
- 1890 – Wyoming Constitution & First State Legislature
 - Water is property of the State
 - Prior Appropriation doctrine established
 - Position of State Engineer created
 - Four (4) Water Divisions defined
 - Superintendent position created for each division
 - Board of Control created
 - Duty of water established as 1 cfs per 70 acres

History

- 1890 – Wyoming Constitution & First State Legislature
 - Board of Control charged with dividing the state into water districts to allow for economical supervision
 - Water commissioner position redefined
 - Originally County employees appointed by Governor
 - Converted to State employees in 1992
 - Appointed by the Governor after recommendation by the State Engineer
 - At – will employees



Water Commissioners

- W.S. 41-3-603(a) – “The water commissioner shall, as near as may be practicable, divide, regulate and control the use of water...”
- W.S. 41-3-606 –
 - Commissioners work under the general direction of the Superintendent
 - Requests for regulation must be in writing
- W.S. 41-3-604 – If headgates are regulated, water commissioner shall attach a written a notice

Water Commissioners

- W.S.41-3-605 – Water Commissioners have the power to arrest offending persons
- W.S.41-3-613 – Superintendent has the authority to order in lockable headgates and measuring devices on any diversion
- W.S.41-3-614 – Unlawful for any person to willfully use or possess water that has been lawfully denied by the water commissioner

Water Commissioners

- W.S.41-3-616 – Penalties for violation of water laws
 - After written notice of violation from State Engineer's Office or Board of Control- Fines up to \$1,250/day
 - After written order issued by the State Engineer – Fines up to \$1,250/day and imprisonment not to exceed 3 months
 - Penalties are levied by the State Court system

Water Commissioners

- W.S. 41-3-603(b) – appeal process for water commissioner decisions defined
 - Water Commissioner
 - Superintendent
 - State Engineer
 - District Court
 - State Supreme Court
- Current Employment Levels
 - Four (4) Division Superintendents
 - Thirty-three (33) Full Time Water Commissioners
 - Twelve (12) Part Time Water Commissioners
 - Fourteen (14) Support staff

Bates Creek

- Bates Creek is tributary to the North Platte River
- Valley alluvium varies in thickness, 0 – 80 feet
- 1978 ground water modeling showed significant surface water depletions from ground water pumping
- October 4, 2006 meeting with appropriators
 - Ground water and surface water – one source of supply
 - If call for regulation is received, agency will regulate ground water and surface water users in priority

Bates Creek

- May 16, 2007 – Call for regulation received from the Bates Creek Cattle Company for surface water rights dating 1886 – 1934
- Water Commissioner approved request and began regulating off junior water rights
- May 17, 2007 – Appeal to Superintendent of Water Commissioner's decision received for three wells with priority dates of 1976 - 1977
- May 24, 2007 – Superintendent upholds the Water Commissioner's decision

Bates Creek

- May 25, 2007 – Appeal of Superintendent's decision made to the State Engineer
- June 12, 2007 – State Engineer upholds the Superintendent's decision
- July 5, 2007 – Petition for Review of State Engineer's decision submitted to district court
- Court has yet to rule

Down Ditch Regulation

- W.S. 41-3-604 – Water Commissioner shall have authority to regulate various users of incorporated or un-incorporated ditches and reservoirs
- W.S. 41-6-301 – Provides when two or more parties in a “not incorporated” ditch or reservoir disagree as to the water distribution, they may petition the water commissioner to take charge. The Water Commissioner “shall take exclusive charge of the ditch or reservoir...”

Down Ditch Regulation

- 1916 Attorney General opinion – Superintendent and staff not required to regulate down ditch
- W.S.41-3-503 – It shall be the duty of the Superintendent to regulate and control the storage and use of all water under all rights of appropriation

Down Ditch Regulation

- A pipeline company (incorporated) in western Wyoming has an internal dispute amongst its members.
 - Company formed in 1963 to consolidate nine separate water right priorities from ditches into one pipeline
 - Since 1963 the company by-laws have administered the pipeline under two priorities
 - In 2007 the by-laws were revised to operate the pipeline as one priority
 - The upper properties (senior rights) have trouble getting water due to the gravity supply pipeline

Down Ditch Regulation

- December 10, 2007, senior water right holders appealed to the Superintendent to intervene in district operations
- December 18, 2007, Superintendent declined because it is the agency's policy to not intervene into the internal management of incorporated districts
- January 17, 2008, Decision of Superintendent appealed to the State Engineer
- February 4, 2008, Superintendent's decision upheld by the State Engineer
- March 3, 2008 Petition for judicial review filed with the District Court

Questions????